IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 21338 of 2006(M)

PETITIONER:

M.N.BHASKARAN NAIR,
P.W.D. CONTRACTOR, 'USHUS',
PAZHAVEEDU P.O., ALAPPUZHA.

BY ADV. SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE SECRETARY TO P.W.D. DEPARTMENT,
GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM.

3. THE CHIEF MANAGER (ADVANCES),
STATE BANK OF TRAVANCORE,
REGION-3, ZONAL OFFICE, ERNAKULAM.

4. THE MANAGER,
STATE BANK OF TRAVANCORE,
PAZHAVEEDU BRANCH, ALAPPUZHA.

BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW
SPL GOVERNMENT PLEADERSRI.C.T.RAVIKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/08/2007, ALONG WITH W.A.NO.1966 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

PETITIONER'S EXHIBITS:

EXT.P1- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER CLAIMING TENDER EXCESS.

EXT.P2- COPY OF THE GOVERNMENT ORDER DATED 10-10-2003.

EXT.P3- COPY OF THE REVIEW PETIITON FILED BY THE PETITIONER DATED 16-3-2004.

EXT.P4- COPY OF THE NOTICE ISSUED BY THE SBT, ZONAL OFFICE, ERNAKULAM UNDER SECTION 13 (2) OF ACT NO.54 OF 2002.

EXT.P5- COPY OF THE RUNNING ACCOUNT BILL FOR TYPE 1 AND 2 FOR THE WORK OF T.D.M.C. ALAPPUZHA CONSTRUCITON OF STAFF QUARTERS TYPE i AND ii.

EXT.P6- COPY OF THE RUNNING ACCOUNT BILL FOR TYPE 1 AND 2 FOR THE WORK OF TDMC ALAPPUZHA CONSTRUCITON OF STAFF QUARTERS TYPE IV AND VI.

EXT.P7-COPY OF HTE RUNNING ACCOUNT BILL FOR TYPE 1 AND 2 FOR HTE WORK OF TDMC ALAPPUZHA CONSTRUCITON OF STAFF QUARTERS TYPE III.

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.P.(C). No. 21338 of 2006-M & W.A.No.1966 of 2006-B

Dated this the 10th day of August, 2007.

J U D G M E N T

Sankaran,J.

The petitioner in W.P.(C).No.21337 of 2006 is the appellant in W.A.No.1966 of 2006. The appellant is also the petitioner in W.P.(C).No.21388 of 2006.

(2). The petitioner is a contractor and he was awarded the work of construction of staff quarters of the Medical College Hospital, Alappuzha. It is stated that he has completed the work. He had taken a loan from the State Bank of Travancore for conducting the contract work. The loan fell in arrears. The bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcements of Security Interest Act, 2002. Challenging the proceedings under the above-said Act, the petitioner filed W.P.(C) No.21337 of 2006. The learned Single Judge disposed of that writ petition by judgment dated 28th August, 2006, which is under challenge in W.A.No.1966 of 2006. The learned Single Judge issued the following directions.

> " The petitioner shall pay an amount of Rs.10 lakhs within one month from today and file a suitable representation before the Ist respondent for time to pay the balance. If the petitioner complies with the same, the Ist respondent shall consider and pass appropriate orders on the petition to be so submitted by the petitioner, expeditiously. If the petitioner complies with the above directions, further steps pursuant to the impugned proceedings shall be kept in abeyance. However, if the petitioner commits default, the respondents would be free to continue the proceedings initiated without having to issue any fresh notice or proceedings in that regard. If the petitioner complies with the above

> directions, further payment shall be in accordance with the orders to be passed by the Ist respondent on the petition to be filed by the petitioner as above."

(3). The petitioner did not comply with the direction to pay Rs.10 lakhs. It is stated by him that inspite of his best efforts, he could not raise funds and even his attempt to raise funds by taking loan from other banks did not fructify. In the meantime, in W.P.(C) No.21338 of 2006 an interim order dated 21-12-2006 was passed which reads as follows:

> " Heard counsel on either side. Considering the peculiar nature of the case, the financial difficulties experienced by the petitioner and the demand made by the State Bank of Travancore, we feel it would be appropriate that a direction be given to the 2nd respondent to pay Rs.18 lakhs in respect of 3 works due to the 3rd respondent Bank within one month from today. This order is issued without prejudice to the various contentions raised by the petitioner."

(4). Pursuant to that direction, a sum of Rs.18 lakhs was paid by the State of Kerala to the State Bank of Travancore, towards the liability of the petitioner.

(5). A counter affidavit is filed by the second respondent in W.P. (C) No.21338 of 2006 wherein it is stated that a total sum of Rs.2,04,42,411/- was paid to the petitioner. It is also stated that, further amounts are due to the petitioner. We extract here paragraphs 5 and 6 of the counter affidavit for

convenience.

> "5. Prior to the filing of the above Writ Petition the petitioner had approached the Arbitration Committee for the purpose of getting enhancement of the rates. The said committee has awarded an enhancement of 120% on the rates in respect of the works carried out after the date of sanction of the revised estimate. The amount due to the petitioner on account of the said award of the Arbitration Committee has to be quantified and sanctioned. Over and above, in respect of the works done in deviation of the sanctioned revised estimate, certain amount is also due to the petitioner. This amount is also to be quantified and sanctioned.
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> 6. It is humbly submitted that for the purpose of finalisation of the above process, some procedural formalities have to be adhered to. For that purpose, a period of three months is required. It is therefore, humbly prayed that this Hon'ble Court may be pleased to accept the above affidavit."

(6). Going by the counter affidavit, a period of three months is required to finalise the amount to be paid to the petitioner by the Government. The prayer in W.P.(C).No.21388 of 2006 is not to pay the amount directly to the petitioner, but to pay the amount to the State Bank of Travancore. The relief sought for in that writ petition reads as follows:

> " Issue a writ of mandamus or any other appropriate writ, order or direction directing the Ist and 2nd respondents to disburse the bill amount to the 4th respondent or to the petitioner for the works executed by him for the construction of Type I, II, III, IV and VI Staff quarters T.D.Medical College, Alappuzha."

(7). After having heard the learned counsel for the petitioner, the bank and the learned Government Pleader, we are of the view that the writ petition and writ appeal can be disposed of in the following manner, which would safeguard the interest of all concerned. Accordingly, the following :

ORDER

(i). Respondents 1 and 2 in W.P.(C).No. 21338 of 2006 shall complete the process of finalisation of the balance payment to the petitioner as detailed in paragraphs 5 and 6 of the counter affidavit filed by the second respondent. The amount shall be paid directly to the State Bank of Travancore in discharge of the liability of the petitioner in the writ petition. If there is any balance due to the petitioner, the same shall be paid directly to the petitioner. The payment shall be made by respondents 1 and 2 in W.P.(C).21338 of 2006, within a period of three months.

(ii). Within a period of two weeks from today, the petitioner shall approach the State Bank of Travancore and make an application for one-time-settlement. It is made clear that it is not necessary to deposit any further amount for consideration of the application for one-time-settlement facility. The bank shall dispose of the one-time-settlement application, within a period of four weeks from the date of receipt of the application.

(iii). The State Bank of Travancore shall intimate the Government, the amount which the petitioner is liable to pay to the bank, within

a period of one week after finalising the one-time-settlement scheme.

(iv). In case the amounts are not paid to the bank as mentioned above, the bank would be free to take appropriate steps for realisation of the amount due after issuing fresh notice under the Securitisation and Reconstruction of Financial Assets and Enforcements of Security Interest Act, 2002. For a period of four months, the proceedings under the above-said Act shall be kept in abeyance. .

(8). In view of the order passed in the writ petition and writ appeal, I.A.No.629 of 2007 in W.A.No.1966 of 2006 is dismissed.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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